IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1206 of 2007

S.Ramesh .. Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by its Secretary to Govt.,
   Prohibition and Excise (XIV) Dept.,
   Fort St. George, Chennai.

2. The District Magistrate and District Collector,
   Vellore District. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Raghavachari
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, son of the detenue, by name Kasthuri, who was detained at Central Prison, Vellore, by an order dated 16.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding her as a Bootlegger, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in C3.D.O.No.54/2007, to set aside the same and to direct the respondents to produce her before this Court and set her at liberty.

2.Facts which led to the passing of the detention order is as follows :-

"On 23.06.2007 at 09.00 hours, while conducting prohibition raid at Kavakkarai Theru in Perumuchi Village, the Inspector of Police, Arakonam Town Police Station found the detenue selling illicit arrack. On seeking the police party, persons who had come there to consume the illicit arrack escaped, and the detenue was arrested and on the basis of confession statement given by her, a case in Cr.No.276/2007 was registered for offences under Section 4(1)(i) 4(1)(aaa) 4(1-A) II of the Tamil Nadu Prohibition Act r/w Section 328 IPC. The sample of illicit arrack seized was sent for Chemical

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Analysis and it was found admixed with 6.6 mgs of atropine".

3.The second respondent, taking note of the above ground case and finding that the detenue came to the adverse notice of the authorities in three cases of alike nature on the file of same police station, viz., in Crime Nos.140/2006, 1114/2006 and Cr.No.130/2007, having satisfied that there is compelling necessity to detain the detenue in order to prevent her from indulging in such activities, which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay on the part of the sponsoring authority in sending the parawar remarks to the detaining authority.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2.Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3.The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4.Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5.It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay

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will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.Coming to the case on hand, admittedly, objecting to the order of detention, a representation dated nil was made on behalf of the detenue, which was received by the Government on 1.8.2007. Remarks were called for from the detaining authority on 2.8.2007, who, in turn, called for parawar remarks from the sponsoring authority on 7.8.2007. The Sponsoring Authority has submitted his remarks only on 13.08.2007, after a delay of six days. Even excluding the intervening public holidays, viz. 11.8.2007 and 12.8.2007, the delay of four days is admittedly unexplained and hence, inexcusable. Thereafter, it was sent to the Government on 14.08.2007. The same was received by Government on 20.8.2007. Thereafter, the file was submitted on 24.8.2007 and it was considered by the Under Secretary on 28.8.2007 and the Additional Secretary on 29.8.2007. The Minister concerned dealt with the file on 29.8.2007 and rejected the same. The rejection letter was prepared and sent on 30.8.2007 and the same was served to the detenu on 01.09.2007.

7.At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

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8.That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9.In the instant case, there is delay of four days on the part of the sponsoring authority in sending the parawar remarks, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention is set aside. The detenue is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

sra

To:

1. The Secretary to Government
of Tamil Nadu, Prohibition and
Excise [XIV] Department, Fort St. George,
Chennai 600 009.

2. The District Magistrate and District Collector,
Vellore District.

3. The Superintendent,
Special Prison for Women,
Central Prison, Vellore.

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4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
Public[Law and Order] Department,
Fort St. George, Chennai 9.

+ 1 CC To Mr. V.Raghavachari, Advocate SR NO.71411

H.C.P.No.1206 of 2007

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